

COMMONWEALTH

v.

GERALD A. SANDUSKY

Commonwealth Attorneys:

Defense Attorneys:

: IN THE COURT OF COMMON PLEAS OF
: CENTRE COUNTY, PENNSYLVANIA

:

: NO: CP-14-CR-2421-2011 &
: CP-14-CR-2422-2011

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:

Joseph McGettigan, Esquire
Jonelle H. Eshbach, Esquire
Joseph L. Amendola, Esquire
Karl E. Rominger, Esquire

MOTION TO COMPEL Pa.R.E. 404(b) DISCLOSURE

1. Prosecutors have sent thousands of pages of reports and discovery materials.
2. As recently as May 6, 2012 prosecutors have made public "new evidence".
3. Much evidence is believed to be yet to be provided.
4. The prosecution has eluded it has provided evidence of bad acts and/or uncharged conduct within the voluminous discovery some of which it might seek to admit at Trial.
5. Pa.R.E. 404(b)(4) states that "in criminal cases, the prosecution shall provide reasonable notice in advance of trial, or during trial if the court excuses pretrial notice on good cause shown, of the general nature of any such evidence it intends to introduce at trial".
6. As a result Defendant requests the Commonwealth provide a particular statement of the incidents or claims they intend to illicit at trial.
7. Defendant is simply asking the Commonwealth provide a list of each act or act(s) it feels is admissible und Pa.R.E. 404(b).
8. Counsel cannot prepare without the same, prepare motions to exclude, nor prepare rebuttal witnesses, and seeks to avoid surprise.

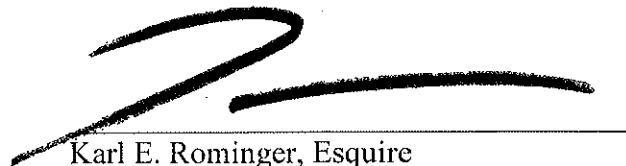
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PROthonotary
CENTRE COUNTY, PA

9. Further counsel may seek to enter reverse 404(b) evidence to rebut the specific allegations of the Commonwealth, but again has no idea what will become relevant.
10. Reverse 404(b) evidence has been allowed in the Federal Courts¹, but there is no case law in Pennsylvania on point.
11. Further, given the complexity of this case, Due Process as found in the Sixth Amendment and Article I Section 9 of the respective sovereign Constitutions requires specific enumeration of the claims ahead of trial in this instance.

WHEREFORE defendant requests an Order compelling an enumeration of the matters the Commonwealth seeks to admit at trial.

Date: April 5, 2012

Respectfully submitted,
ROMINGER & ASSOCIATES



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Supreme Court ID # 81924
Attorney for Defendant

¹ Although the idea of “reverse 404(b)” is completely foreign to Pennsylvania state courts, the idea is not foreign in the federal context, and was discussed by the Third Circuit Court of Appeals in United States v. Hayes, 219 Fed. Appx. 114 (3d Cir. N.J. 2007).

The rule [404(b)] is usually applied in the context of prosecution attempts to introduce ‘bad act’ evidence against a defendant. However, a ‘seldomly used subspecies of Rule 404(b) known as reverse 404(b)’ evidence is sometimes relied upon by a defendant to rebut allegations of criminality or criminal intent. . . . When used in this manner, Rule 404(b) limits a defendant’s attempt to rely upon prior ‘good acts’ as exculpatory evidence. . . . As is true with bad act evidence, evidence of good acts is also admissible for a proper purpose such as motive, intent, absence of mistake, etc. Hayes, 219 Fed. Appx. at 116.

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CERTIFICATE OF SERVICE

I, Karl E. Rominger, Esquire, do hereby certify that I served a copy of the *Praeceptum* upon the following by HAND DELIVERY, addressed as follows:


Hon. John M. Cleland, Senior Judge
c/o Ms. Maxine Ishler, Court Administrator
Centre County Courthouse
102 South Allegheny Street
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Date: April 5, 2012

Respectfully submitted,
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